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KBLDP0106US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Keene

Serial No: 10/623,936

Filed: July 21, 2003

Art Unit: 3635

Examiner: Robert Canfield

Confirmation No.: 6475

For: WEEP VENTING SYSTEM FOR MASONRY WALLS

DECLARATIONCommissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1345

Sir:

I, James R. Keene, the applicant for the above-identified application, declare the following:

The entire delay from the abandonment of the application on September 29, 2005 to the filing of the petition for revival on August 19, 2009 was unintentional.

During the period from March 21, 2005 until December 31, 2007, I was represented by attorney Justin S. Rerko (Reg. No. 53,510). Mr. Rerko filed an Amendment and Request for Extension of Time on April 1, 2005. Mr. Rerko also filed a Petition to Withhold the Holding of Abandonment under 37 C.F.R. 1.181(a), and an Amendment After Final Rejection under 37 C.F.R. 1.116, on March 15, 2006. The petition to withhold was dismissed by the USPTO on April 11, 2006.

During the period from March 21, 2005 to December 31, 2007, Mr. Rerko was handling all of the intellectual property matters for my company, Keene Building Products, and I had been relying on him to maintain copies of all of the company's patent application papers. Mr. Rerko did not provide me with copies of any documentation for this application. Mr. Rerko did not inform me that the application had gone abandoned.

Mr. Rerko's license to practice law in the state of Ohio was suspended on December 3, 2007. See, Exhibit A.

In December of 2007, attorney Ramon D. Foltz (Reg. No. 24,162) advised me that since the application was unpublished, I would have to contact the Patent Office directly in order to obtain the serial number, filing date and title of the application. See, Exhibits B and C. I obtained this information in December of 2007.

I revoked the power of attorney for Mr. Rerko and executed a power of attorney in favor of Mr. Foltz on December 31, 2007. The power of attorney for Mr. Foltz was accepted by the USPTO on January 14, 2008. Mr. Foltz thereafter became ill and was unable to continue representing me.

I attempted to contact Mr. Rerko by telephone numerous times, but he did not return my calls. In April of 2008, I had several exchanges of emails with Mr. Rerko. I requested information concerning the status of the application and copies of the application documents. I was unable to obtain the requested information or documents from Mr. Rerko. See, Exhibits D-F.

I asked attorney Neil A. DuChez (Reg. No. 26,725) to take over representation for the application. The power of attorney for Mr. DuChez was filed in the USPTO on May 6, 2009. After filing of the power of attorney, Mr. DuChez obtained copies of the application papers from the USPTO. It was at that time that I discovered that the application had gone abandoned. I then instructed Mr. DuChez to file the appropriate papers in the USPTO to revive the application. This was done with the Petition for Revival Under 37 C.F.R. 1.137(b), RCE and Response to Final Rejection that were filed by the undersigned attorney on August 19, 2009.

The following chronology of events, which are summarized above, occurred with respect to the application:

- January 21, 2003: The application was filed by attorney David A. Burge (Reg. No. 24,390) with a request not to publish.
- October 1, 2004: The first office action on the merits was mailed to Mr. Burge by the USPTO.
- March 21, 2005: The Power of Attorney for Mr. Burge was revoked. A Power of Attorney in favor of Mr. Rerko was filed in the USPTO.

April 1, 2005: An Amendment and Request for Extension of Time was filed in the USPTO by Mr. Rerko.

May 5, 2005: The Power of Attorney appointing Mr. Rerko was accepted by USPTO.

June 28, 2005: A final rejection was mailed by the USPTO to Mr. Rerko.

September 29, 2005: The application went abandoned.

February 2, 2006: A Notice of Abandonment was mailed by the USPTO to Mr. Rerko by the USPTO.

March 15, 2006: A Petition to Withhold the Holding of Abandonment under 37 C.F.R. 1.181(a) and an Amendment After Final Rejection Under 37 C.F.R. 1.116 were filed in the USPTO by Mr. Rerko.

April 11, 2006: A Decision dismissing the petition to withhold was mailed to Mr. Rerko by the USPTO.

December 3, 2007: The Supreme Court of Ohio suspended the license of Mr. Rerko to practice law in the State of Ohio. See, Exhibit A.

December 3-5, 2007: Mr. Foltz informed me that since the application was an unpublished application, we could not get copies of any documents that were on file in the USPTO until I contacted the USPTO directly and provided it with information regarding my identity as the applicant. See, attached Exhibits B and C. I contacted the USPTO and was provided with the serial number, filing date and title for the application.

December 31, 2007: A revocation of the Power of Attorney for Mr. Rerko was filed in the USPTO. A Power of Attorney in favor of Mr. Foltz was filed.

January 14, 2008: The USPTO accepted the Power of Attorney for Mr. Foltz.

January 22, 2008: The Patent Office records indicate that the USPTO notice to Mr. Rerko regarding revocation of his Power of Attorney was returned to USPTO as undeliverable.

April 20-28, 2008: I had an exchange of several emails with Mr. Rerko wherein I attempted to get information concerning the status of the application and copies of the files. Mr. Rerko did not provide me with any of the requested information or copies. See, Exhibits D-F.

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May 6, 2009: I revoked the Power of Attorney for Mr. Foltz due to the fact that he was unable to continue his representation in this case due to illness. A Power of Attorney in favor of Mr. DuChez was filed in the USPTO.

May 27, 2009: Mr. DuChez provided me with copies of the application papers which he obtained from the USPTO. It was not until this time that I found out that the application had gone abandoned. I instructed Mr. DuChez to file an appropriate response to revive the application.

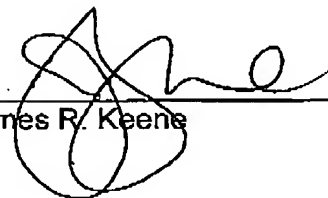
August 19, 2009: A Petition for Revival Under 37 CFR 1.137(b), Request for Continued Examination, and a Response to Final Rejection were filed in the USPTO by Mr. DuChez.

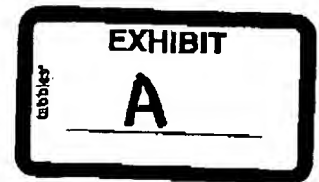
December 7, 2009: A Decision dismissing the Petition for Revival was mailed to Mr. DuChez by the USPTO.

The entire delay from the abandonment of the application on September 29, 2005 to the filing of the petition to revive on August 19, 2009, was unintentional.

I, James R. Keene, declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: 1/4/2010


James R. Keene



Attorney Discipline and Sanction History

Disciplinary sanctions entered against an attorney pursuant to **Gov. Bar R. V** and administrative suspensions entered against an attorney pursuant to **Gov. Bar R. VI** and **Gov. Bar R. X**, are displayed here.

Please click the link below for more information.

Attorney Discipline Explained

Registration
Number: 0076980

Justin Scott Rerko

Disciplinary Action

Effective Date

Supreme Court Case Number

**Attorney Registration
Suspension**

12/03/2007

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Disciplinary sanctions and administrative sanctions entered against an attorney by the Supreme Court pursuant to **Gov. Bar R. V, VI, and X**, (including suspensions for failing to comply with continuing legal education and attorney registration requirements), are displayed here. (Please note that disciplinary sanctions dated prior to 1957 may have been imposed by Ohio courts other than the Supreme Court of Ohio.) The information does not include grievances that may have been filed against an attorney because grievances are generally confidential unless a formal complaint is filed and probable cause determined. The list also does not include disciplinary matters that were dismissed by the Board of Commissioners on Grievances and Discipline or the Supreme Court or that currently are pending against an attorney but not yet decided by the Supreme Court.

Disciplinary information is added to the attorney's record by the office of Attorney Services and will appear the next business day.

If an attorney has a CLE Suspension, CLE Reinstated, Attorney Registration Suspension, Attorney Registration Reinstatement or Attorney Registration Suspension Vacated, please contact the **office of Attorney Services** at 614.387.9320.

If you have further questions, please contact the **office of Attorney Services**.

Supreme Court of Ohio / Public Attorney Information

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Questions or Comments: **Office of Attorney Services**, 614.387.9320

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EXHIBIT

B

Doyle Foltz

From: "James Keene" <jrk@keenebuilding.com>
To: <doylefoltz@roadrunner.com>
Sent: Monday, December 03, 2007 8:45 PM
Subject: RE: Pending Applications

Thank you for your efforts. I do realize that nothing is ever as easy as it seems. This attorney has put KEENE in a bad spot (I should have listened to my fiancée when she said he was trouble - I had NO idea).

Please let me know what you find.

Kind Regards,

Jim

----- Original Message -----

From: doylefoltz@roadrunner.com
To: jrk@keenebuilding.com
Subject: Pending Applications
Date: Mon, 3 Dec 2007 17:28:06 -0500

>Jim,

>

>Nothing is as simple as it should be. This morning I indicated that
>I would provide you with a Power of Attorney that I would use to try
>to get information about your pending, unpublished patent
>applications. I am advised by the Patent Office that a general Power
>of Attorney will not work.

>

>I spoke again with the Legal Section of Patent Office about how to
>proceed in identifying and obtaining information about your pending,
>unpublished patent applications. The Patent & Trademark Office
>recognizes two mechanisms for obtaining information about pending,
>unpublished patent applications. The mechanisms are a power to
>inspect and a power of attorney.

>

>However, either a power to inspect or a power of attorney requires
>identification of the pending applications by Serial No. Since we do
>not have Serial Nos., we can't use either of such powers to get the
>information we want.

>

>The Patent Office promised to get back with me by the end of this
>week with information on whether there is a way for us to get access
>to Patent Office information on pending, unpublished patent
>applications.

>

>As soon as I hear from the Patent Office or figure out a way to get
>information about your pending patent applications, I will let you
>know.

>

>If you have any questions or I can be of any assistance, please let
>me know.

>

>Doyle Foltz

**Doyle Foltz**

From: "Doyle Foltz" <doylefoltz@roadrunner.com>
To: "James R. Keene" <jrk@keenebuilding.com>
Sent: Wednesday, December 05, 2007 2:35 PM
Attach: Obtaining Pending Patent Applications.eml
Subject: Pending Patent Applications

Jim,

The Patent Office called me and gave me the following information about retrieving the filing data for your pending patent applications. The process is simple.

If you call Ms. Cindy Nessler (spelling uncertain) at 571.272.7724 and give her some confirming information about your identity, she will provide the serial numbers and other data regarding your pending patent applications. The identifying information she mentioned to me had to do with confirming your mailing address. She may ask for other information.

Ms. Nessler said that she was able to find "quite a few" pending applications in your name. She indicated that you were a co-inventor on some of these applications and that there were several attorneys involved in these applications. I told her that as far as I know, Justin S. Kerko is the attorney on the applications where information is needed.

You can call Ms. Nessler Monday through Thursday and every other Friday, 8:00 a.m. to 5:30 p.m.

Once you have the information, i.e., title, inventors, application number, and filing date, we can request copies of the file history for those applications. There will be a cost involved, but we will be able to get the information needed to continue the prosecution of the applications presumably with no loss in patent rights.

Let me know when you get the information and we can proceed with Powers of Attorney and such other actions as may be needed to obtain copies of the applications.

Regards.

Doyle Foltz



From: Justin Rerko [mailto:justin.rerko@yahoo.com]
Sent: Sunday, April 20, 2008 6:54 PM
To: James R Keene
Subject: RE: info

jim,

i will do all the investigating that i can to determine the status of these files. give me a day or two and i will report back everything i can learn. i will speak with the uspto as well. i will report back no later than tuesday. unless you instruct otherwise, i'll assume this is ok.

very kind offer of help. much appreciated.

James R Keene <jimkeene@aol.com> wrote:

Maliciousness has nothing to do with this. These are 3 patent applications that are essential to my business and I entrusted them to you and paid you for the filing and writing. I've been trying desperately for months to get my files and to contact you. I appreciate that you are in financial disarray but that should not preclude you from addressing the needs that I have for what I paid.

I need for you to go the extra yard to find the receipts and to make a good conscious effort to get me the info I need to locate these three. With the receipts, I will leave you alone or help you in any way that I can. But first, I NEED THE RECEIPTS FOR THE FILINGS!!!! Do you have the records for the bill that was paid to the USPTO?

From: Justin Rerko [mailto:justin.rerko@yahoo.com]
Sent: Sunday, April 20, 2008 6:11 PM
To: James R Keene
Subject: RE: info

Jim,

I believe you're referring to the 105, 6 and 107. the full contents of all applications are attached.

I did file each of these applications, but i cannot locate any filing receipts. I have all the filing papers that I used to file the applications, but I cannot locate the filing receipts. Honestly, I don't know why this is. Given this lack, perhaps it would be best to file a provisional application for each one until the exact issues can be resolved. I assure you that I did file these; however, the lack of a filing receipt is certainly an issue.

JAN 05 2010

Jim, I did everything I've done for you in good faith. I've never acted maliciously, nor with any intent to defraud you. Of all the clients, you were certainly my favorite.

Not sure if you're aware, but i'm no longer practicing law at all, in any capacity. I no longer have my bar license, and am not doing it. In fact, I incurred so much bad debt from the practice, that I'm having severe financial issues. not trying to make excuses, but i want you to understand that i'm no longer practicing law.

if you want to do a provisional for these three applications, i recognize that you probably don't want me part of it, and my lack of a bar license is an issue. however, i will gladly pay for the cost of the 3 provisionals and can send you the electronic form that is used for making payment so your other attorney can proceed. alternatively, i can file myself and the second i receive receipt, i can provide you the #s and your current attorney can make a transfer. this can be done immediately (i believe online), but i would need to check to make sure.

James R Keene <jimkeene@aol.com> wrote:

There is no record of any of the three patents in the office. I need my files. I need to know what you have done and haven't done. There are the three files that I paid you for the application and the writing of the patents but according to the office and according to the new attorney, they are not on record anywhere. FIRST - DID YOU FILE THEM?

I sent the documents on the past email.

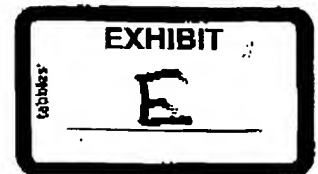
From: Justin Rerko [mailto:justin.rerko@yahoo.com]
Sent: Sunday, April 20, 2008 5:34 PM
To: jimkeene@aol.com
Subject: info

Jim,

What information do you need?

Be a better friend, newshound, and know-it-all with Yahoo! Mobile. [Try it now.](#)

Be a better friend, newshound, and know-it-all with Yahoo! Mobile. [Try it now.](#)



From: Justin Rerko [mailto:justin.rerko@yahoo.com]
Sent: Tuesday, April 22, 2008 5:16 PM
To: James R Keene
Subject: RE: update

filed them paper (through regular mail).

i'll check credit card receipts. didn't think of that.

James R Keene <jimkeene@aol.com> wrote:

How did you file them? Did you make a payment? If you made the payment, can you check your credit card or check receipts?

From: Justin Rerko [mailto:justin.rerko@yahoo.com]
Sent: Tuesday, April 22, 2008 5:08 PM
To: jimkeene@aol.com
Subject: update

Jim,

Unfortunately, I have nothing to report. I went through my records and spoke with the patent office - there are no records. The one thing I did discover is that I filed all three applications on the same exact day, which makes me believe something happened to the entire package.

Would you like me to quickly file a provisional application to each 3?

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Be a better friend, newshound, and know-it-all with Yahoo! Mobile. [Try it now.](#)



From: Justin Rerko [mailto:justin.rerko@yahoo.com]
Sent: Monday, April 28, 2008 9:09 AM
To: jimkeene@aol.com
Subject: update

Jim,

Spent the weekend looking, but unable to locate any records evidencing PTO receipt of my payment.

If you want me to file provisionals and then make immediate transfer to your new atty, please let me know.

I'm tremendously sorry that this has happened.

Truly,
Justin

Be a better friend, newshound, and know-it-all with Yahoo! Mobile. Try it now.